

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOMBARD ADONIS MORALES-  
MARTINEZ,

vs. Petitioner,

ERIC H. HOLDER, U.S. Attorney  
General,

Respondent.

CASE NO. 14-CV-00860-BEN-  
JMA

**ORDER DENYING  
PETITIONER'S MOTION  
FOR STAY OF REMOVAL  
AND DISMISSING PETITION**

[Docket No. 1]

Petitioner's motion to stay removal is before the Court. (Docket No. 1.) Because this Court lacks jurisdiction to consider Petitioner's challenge to his order of removal and Petitioner's request appears to be moot, the motion is **DENIED** and the Petition is **DISMISSED**.

**BACKGROUND**

Petitioner was found ineligible for withholding of removal based on his conviction for corporal injury in violation of California Penal Code § 273.5(a) and ordered removed to Nicaragua on December 30, 2013. (Government's Return in Opp'n to Mot. for Stay of Removal and Pet. for Writ of Habeas Corpus ("Government's Return") [Docket No. 10], Ex. A.) On January 8, 2014, Petitioner filed a petition for

1 review of his removal order and motion for stay of removal with the Ninth Circuit  
 2 Court of Appeals. (*Id.*, Ex. B (Ninth Circuit Case No. 14-70067).)<sup>1</sup>

3 On January 31, 2014, Petitioner filed a supplemental document in support of his  
 4 motion for stay in which he advised the Ninth Circuit that he was seeking post-  
 5 conviction relief in California state court alleging ineffective assistance of counsel.  
 6 (*Id.*, Ex. C.) On March 11, 2014, the Ninth Circuit denied Petitioner's motion. (*Id.*,  
 7 Ex. D.) On March 26, 2014, the Ninth Circuit denied Petitioner's motion for  
 8 reconsideration of the denial of the motion for stay of removal. (*Id.*, Ex. E.) On May  
 9, 2014, Petitioner filed a renewed emergency stay of removal in the Ninth Circuit,  
 10 requesting a stay while he pursued post-conviction relief in California state court. (*Id.*,  
 11 Ex. F.) On May 15, 2014, the Ninth Circuit denied Petitioner's emergency motion for  
 12 a stay of removal. (*Id.*, Ex. G.) Although the Ninth Circuit denied Petitioner's motions  
 13 to stay his removal, his case proceeded and on October 8, 2014, the Ninth Circuit  
 14 granted the Government's unopposed motion to remand the matter to the Board of  
 15 Immigration Appeals ("BIA").

16 On April 9, 2014, Petitioner filed the present Motion for Stay of Removal,  
 17 submitted as a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (Docket No. 1.)  
 18 On May 8 and 13, 2014, Petitioner filed supplemental documents requesting an  
 19 emergency stay of his removal pending the resolution of his state court proceedings.  
 20 (Docket Nos. 7, 9.)

## 21 DISCUSSION

22 Judicial review of removal orders is governed by 8 U.S.C. § 1252, as amended  
 23 by the REAL ID Act of 2005. Under the REAL ID Act, any challenge to Petitioner's  
 24 removal order must be directed to the applicable courts of appeals.

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 28 <sup>1</sup>Petitioner filed a second petition for review with the Ninth Circuit that was  
 ultimately dismissed on May 15, 2014 for failure to prosecute. (Government's Return,  
 Ex. J (Ninth Circuit Case No. 14-70953).)

1 Notwithstanding any other provision of law (statutory or nonstatutory),  
 2 including section 2241 of Title 28, [ . . . ] a petition for review filed with an  
 3 appropriate court of appeals in accordance with this section shall be the sole  
 4 and exclusive means for judicial review of an order of removal entered or  
 5 issued under any provision of this chapter, except as provided in subsection  
 6 (e) of this section. For purposes of this chapter, in every provision that limits  
 7 or eliminates judicial review or jurisdiction to review, the terms ‘judicial  
 8 review’ and ‘jurisdiction to review’ include habeas corpus review pursuant to  
 9 section 2241 of Title 28.

10 8 U.S.C. § 1252(a)(5) (emphasis added); *see also Puri v. Gonzales*, 464 F.3d 1038,  
 11 1041 (9th Cir. 2006) (“The REAL ID Act . . . eliminated district court habeas corpus  
 12 jurisdiction over orders of removal and vested jurisdiction to review such orders  
 13 exclusively in the courts of appeal.”).

14 “Post-REAL ID Act cases considering the applicability of § 1252 have  
 15 distinguished between challenges to orders of removal and challenges that arise  
 16 independently.” *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). However,  
 17 the district court lacks jurisdiction over any challenge that “is wholly intertwined  
 18 with the merits of [the] removal order.” *Singh v. Holder*, 638 F.3d 1196, 1211 (9th  
 19 Cir. 2011) (holding that the petitioner’s habeas petition did nothing more than  
 20 attack the immigration judge’s removal order and was wholly intertwined with the  
 21 merits of his removal order).

22 Here, Petitioner’s motion to stay his removal seeks to halt the final order of  
 23 removal while he attempts to overturn the state conviction that formed the basis for  
 24 his removal. This is both an attempt to halt and a challenge to the final order of  
 25 removal that this Court does not have jurisdiction to consider. Alternatively, it  
 26 appears Petitioner’s request may be moot because the Ninth Circuit has remanded  
 27 his appeal to the BIA.

28 The Court could transfer this case to the Ninth Circuit, however, in light of  
 29 the Ninth Circuit’s previous orders denying the relief Petitioner seeks here and its  
 30 recent remand of the case to the BIA, transfer is not appropriate.

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## CONCLUSION

Petitioner's request for stay of removal is **DENIED** and the Petition is **DISMISSED**.

## IT IS SO ORDERED.

**DATED:** October 11, 2014

**Hon. Roger T. Benitez  
United States District Judge**